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8 *Attorneys for Plaintiff*

9
UNITED STATES DISTRICT COURT

10
NORTHERN DISTRICT OF CALIFORNIA

11 DUSTIN MOON, as an individual and on
 12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15
 16 GENERAC POWER SYSTEMS, INC. and
 GENERAC HOLDINGS, INC., Wisconsin
 17 Corporations, and DOES 1 through 100,
 inclusive,

18 Defendants.

19 Case No.

20 **CLASS ACTION COMPLAINT**

- 21 1) **Breach of Express Warranty;**
- 2) **Breach of Implied Warranty;**
- 3) **Breach of Express Warranty – Song
 Beverly Consumer Warranties Act;**
- 4) **Breach of Implied Warranty – Song
 Beverly Consumer Warranties Act;**
- 5) **California Unfair Competition Law,
 Cal. Bus. & Prof. Code § 17200, et
 seq.; and**
- 6) **California Consumers Legal Remedies
 Act, Cal. Civ. Code § 1750, et seq.**

22 **JURY TRIAL DEMANDED**

INTRODUCTION

1. Plaintiff Dustin Moon (“Plaintiff”) brings this proposed class action on behalf of himself and all current and former purchasers or lessees of Generac PWRcell systems. (“Solar Products” or “Systems”). The following allegations are based upon personal knowledge as to Plaintiff’s own conduct and made on information and belief as to the acts of others.

2. Plaintiff purchased a residential solar energy system equipped with a Generac PWRcell system. The PWRcell system operates in conjunction with home solar panels to provide, boost, regulate, convert, store, and monitor energy produced through the solar panels. Generac does not sell or provide the home solar panels. Rather, it manufacturers and sells the power management system used with the panels.

3. Generac's PWRcell system includes components called SnapRS (Rapid Shutdown) units. SnapRS devices are safety devices designed to rapidly shut down power to individual solar panels as required by the National Electric Code ("NEC") and reduce photovoltaic ("PV") output voltage to safe levels (less than 80 volts). These critical "shutoff" units are installed between each solar panel and are designed to protect against electrical surges, such as those caused by lightning strikes. If working properly, the SnapRS devices prevent electric shock, electrocution, physical harm, equipment damage, and damage to property.

4. However, Generac's SnapRS units are defective and dangerous to consumers and their homes. The shutoff devices malfunction by becoming overactive, repeatedly turning off and on, causing them to overheat, bubble, burn and explode, resulting in charring and home fires ("Defect"). In addition, the Defect results in a loss of energy production for consumers' home energy systems by shutting down entire panels for prolonged periods of time or complete shutdowns of their entire energy system. Malfunctions are detected through Generac's inverters and coded as "PVRSS Lockout" system errors which send the system into "lockout mode," preventing the solar energy system from producing solar energy until the lockout is cleared.

5. Despite that it knew or should have known of this Defect, Generac failed to disclose this Defect to Plaintiff and other consumers. It has also failed to recall, provide refunds or adequate replacement components, or otherwise inform the public that its Systems are defective and pose a

serious safety risk to the public.

6. Generac's conduct violates well-established tort and consumer protection laws, including in California. Plaintiff brings this suit on behalf of himself and similarly situated consumers, seeking damages and appropriate equitable relief, including an order enjoining Generac from selling its Solar Products without disclosing their defect to consumers.

PARTIES

7. Plaintiff Dustin Moon is, and at all relevant times was, a citizen and resident of Soquel, California, located in Santa Cruz County, California.

8. Defendant Generac Power Systems, Inc. distributes, markets, and directs the marketing of its products, including the aforementioned Systems, throughout the United States and, upon information and belief, is a publicly-traded Wisconsin corporation with its principal place of business located at S45 W29290 Highway 59, Waukesha, Wisconsin 53189.

9. Defendant Generac Holdings, Inc. is the parent company of Generac Power Systems, Inc. Generac Holdings, Inc.'s principal executive offices are located at S45 W29290 Highway 59, Waukesha, Wisconsin 53189. Defendants Generac Power Systems, Inc. and Generac Holdings, Inc. are collectively referred to herein as "Generac."

JURISDICTION AND VENUE

10. This Court has original jurisdiction over the Class Action Fairness Act, 28 U.S.C § 1332(d), because (a) at least one member of the proposed class is a citizen of a state different from Generac; (b) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, (c) the proposed class consists of more than 100 class members, and (d) none of the exceptions under the subsection apply to this section.

11. This Court has jurisdiction over Generac because it is registered to conduct business in California, has sufficient minimum contacts in California, and otherwise intentionally avails itself of the markets within California through the promotion, sale, marketing and distribution of its products, such that the exercise of jurisdiction by this Court is proper and necessary.

12. Venue is proper in this District under 28 U.S.C. § 1391 because Generac conducts substantial business in this District, and a substantial part of the events giving rise to Plaintiff's

1 claims occurred in this District.

2 **FACTUAL ALLEGATIONS**

3 13. Generac describes itself as a “leading global designer and manufacturer of a wide
4 range of energy technology solutions,” providing “power generation equipment, energy storage
5 systems . . . and other power products serving residential, light commercial and industrial markets.”
6 (Generac Feb. 22, 2022 Form 10-K, at p. 43, *available at* www.generac.com, *Investor Relations*,
7 *SEC Filings*, <https://investors.generac.com/static-files/16af6044-ca8b-4828-80f9-af48a4be7b55>,
8 last visited on Dec. 22, 2022.)

9 14. As of November 2022, Generac reported net sales of \$4.6 billion (LTM) and
10 Adjusted EBITDA (earnings before interest, taxes, depreciation, and amortization) of \$872 million
11 (LTM). (Generac Nov. 2022 Investor Presentation, at p. 4, *available at* www.generac.com,
12 *Investor Relations, Investor Presentations*, <https://investors.generac.com/static-files/114bea95-5b18-4a91-b786-af5b424e5158>, last visited on Dec. 22, 2022.)

14 15. Generac was founded in 1959 as an affordable portable generator company. In
15 1980, it expanded into industrial power generation and introduced its first residential standby
16 generator in 1989. Generac expanded its industrial products and global distribution system in the
17 1990s and in the 2000s continued to expand its residential and commercial automatic standby
18 generator product lines. (Generac 2021 Annual Report, at pp. 3-4, *available at* www.generac.com,
19 *Investor Relations, Annual & ESG Reports*, <https://investors.generac.com/static-files/e6ea7b98-227f-4c08-b205-5c895533173e>, last visited on Dec. 22, 2022.)

21 16. Starting in 2019, Generac made “significant investments” in “energy technology
22 solutions” including through the rapid acquisition of several companies involved in the manufacture
23 of residential solar panel systems. (*Id.* at p. 4.)

24 [B]eginning with the March 2019 acquisition of Neurio Technology Inc., a leading
25 energy data company focused on metering technology and sophisticated analytics to
26 optimize energy use within a home or business. This was followed by the April 2019
27 acquisition of Pika Energy Inc., a designer and manufacturer of battery storage
28 technologies that capture and store solar or other power sources for homeowners
and businesses. In October 2020, the Company acquired Enbala Power Networks
Inc., one of the leading providers of distributed energy optimization and control
software that helps support the operational stability of the world’s power grids. In
July 2021, Generac added to its residential clean energy portfolio with the

1 acquisition of Chilicon Power LLC, a designer and provider of grid-interactive
 2 microinverter and monitoring solutions for the solar market. With these acquisitions,
 3 Generac has established itself as a credible leader in the rapidly growing residential
 4 clean energy market, focused on solar, battery storage and grid services applications.
 5

6 (Id.; *see also id.* at p. 21.)

7 17. Prior to these acquisitions, Generac was not involved in the residential solar energy
 8 business.
 9

10 18. Generac includes “Solar, Storage & Monitoring Markets Developing Quickly”
 11 among its “Strategic Growth Themes” and described its “Integrated Energy Ecosystem” as the
 12 “Industry’s Broadest Residential Clean Energy Product Offering.” (Id. at pp. 6, 14.)
 13

14 19. Its primary clean energy product offering is the PWRcell Solar + Battery Storage
 15 System. Generac advertises its PWRcell system as a product that will “[s]ave money,” allow
 16 customers to “prepare for power outages” and “help the environment.” (Generac PWRcell
 17 Brochure, *available at* www.generac.com, *Homeowners, Products – Clean Energy, PWRcell,*
 18 *PWRcell Brochure,*
 19 https://www.generac.com/generaccorporate/media/library/content/clean%20energy/pwrcell_consumerbrochure_202212_digital.pdf?ext=.pdf (“PWRcell Brochure”), last visited Dec. 22, 2022.)
 20 The PWRcell system was designed and is manufactured by Generac.

21 20. It claims that its PWRcell system “has all the power and capacity you need, enough
 22 to save money on energy bills and keep the whole home powered when the grid goes down”
 23 It also represents that its PWRcell system can “save you money on your monthly ele[c]tric bill
 24 AND protect you and your family,” and that the system’s cohesive load management provides
 25 consumers with “further protection.” (Generac.com, *Clean Energy, PWRcell,* at
 26 <https://www.generac.com/all-products/clean-energy/pwrcell>, last visited on Dec. 27, 2022.)
 27

28 21. Generac further advertises that its customers should “[n]ever be surprised by utility
 29 power outages or high electricity bills again when you have the Generac PWRcell, a fully integrated
 30 solar + battery storage system. PWRcell provides backup power using stored energy from the sun,
 31 which helps you save money.” (PWRcell Brochure at p. 2.)
 32

1 22. According to Generac, its PWRcell “offers 30% more power output than [its]
 2 competitors,” estimated energy savings of \$159 per month, and estimated savings of \$68,217 over
 3 twenty-five years. (*Id.* at p. 5.) Generac customers can monitor the performance and energy output
 4 for their System through Generac’s PWRview energy monitoring app. Among other functions,
 5 PWRview allows Generac customers to “[t]rack the status of [their] battery system to ensure energy
 6 is available during peak demand times and utility power outages” and “[u]nderstand how PWRcell
 7 helps [them] meet [their]energy needs” (*Id.* at p. 6.)

8 23. The PWRcell system is customizable and described by Generac as “easy” to install.
 9 Generac does not manufacture or provide the residential solar panels. Instead, its System “pairs
 10 with solar panels” made by other manufacturers. (*Id.* at p. 4.)

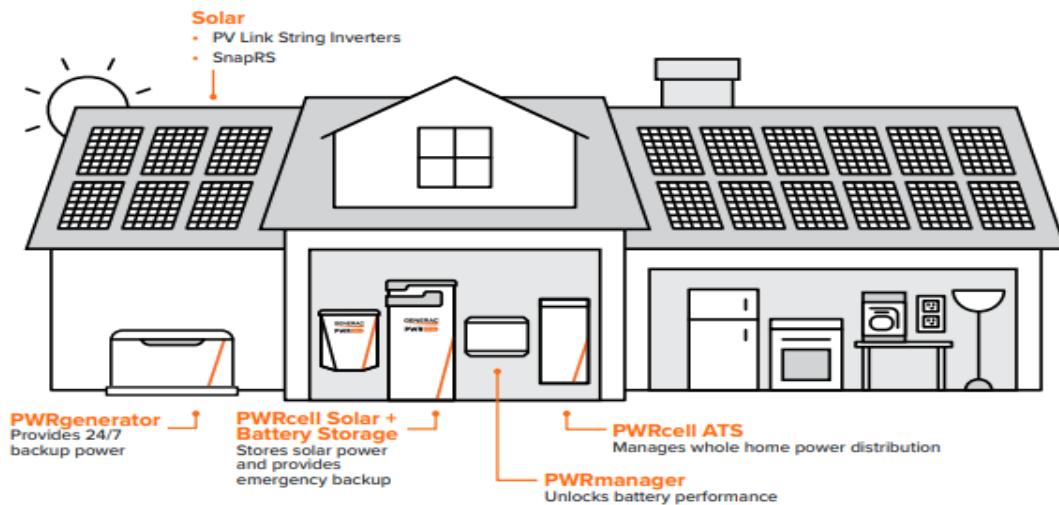
11 24. The PWRcell system manages, processes, stores, monitors, and provides electricity
 12 generated through the solar panels. Generac markets its PWRcell system as “revolutionary battery
 13 storage technology [that] captures and stores energy from the sun using solar panels” and that the
 14 “energy stored can be discharged to power your home during peak demand times when the cost of
 15 utility power is higher, which can help you save thousands in electric utility costs.” In addition,
 16 Generac describes its PWRcell as being a critical safety system that can be used by consumers in
 17 the event of natural disasters or power outages. Specifically, its advertisements proclaim that the
 18 Systems “provide whole home backup power during utility power outages, so you stay comfortable,
 19 safe and secure in your home.” (Generac PWRcell Homeowner Resources, *available at*
 20 www.generac.com, *Homeowners, Support – PWRcell and PWRview, Introducing PWRcell,*
 21 *available at* <https://www.generac.com/service-support/pwrcell-homeowner-resources/introducing-pwrcell>, last visited on Dec. 22, 2022.) For many consumers, especially vulnerable homeowners
 22 who need electricity for medical devices and other life saving measures, the ability of the Solar
 23 Products to reliably provide electricity during power outages, is a critical selling point for these
 24 Systems.

26 ///

27 ///

28 ///

1 25. Generac depicts its complete, fully integrated PWRcell system with the following
 2 graphic:



11 (PWRcell Brochure at p. 8.)

12 26. Among the components for Generac's PWRcell system are the PV Link and
 13 SnapRS, pictured and described below:



SnapRS / Rapid Shutdown Device

14 15 SnapRS is an in-line disconnect device that helps to satisfy module-level
 16 rapid shutdown requirements.



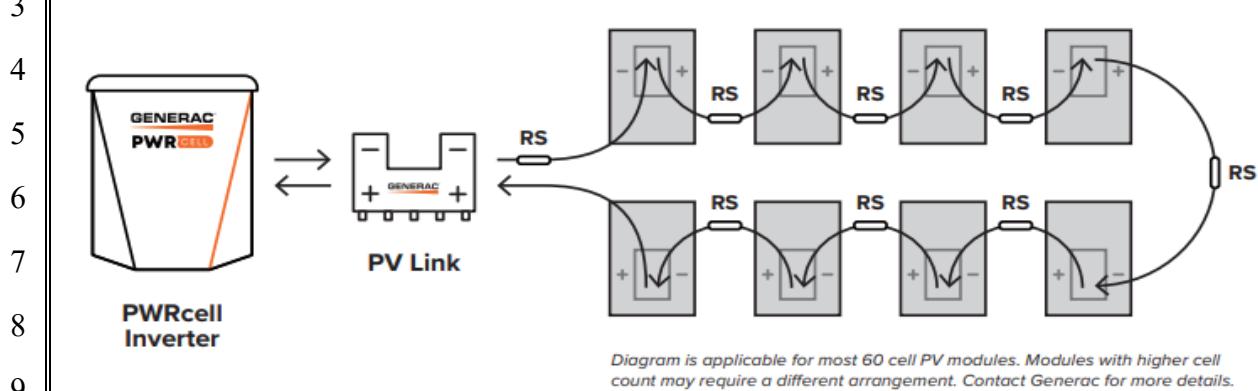
PV Link / Optimizer

17 18 19 20 Each PV Link allows you to connect 2 to 9 solar PV modules, enabling you
 21 to build a flexible, easy-to-install solar array.

22 (Id. at p. 9.)

23 24 25 26 27 28 27. SnapRS (Rapid Shutdown) devices are connected to the negative lead of each PV
 module (solar panel) in the solar array "for simple module-level shutdown compliance. SnapRS
 devices isolate array voltage when a rapid shutdown is initiated at a PWRcell Inverter. When rapid
 shutdown is initiated, SnapRS units isolate each PV module in the array, reducing array voltage to
 <80V in seconds." (Generac SnapRS Spec Sheet, available at <https://www.generac.com/service-support/product-support-lookup/product-support-details?productid=4194798d-a712-4fc2-abe4>)

1 [08ed498f43de](https://www.generac.com/resources-and-tools/ce-installer-resources/become-an-installer), last visited on Dec. 22, 2022.) A diagram of a solar panel array with the
 2 incorporated Generac PV Link and SnapRS devices (depicted as “RS”) is shown below:



10 (Id.)

11 28. Generac advertises that its SnapRS devices comply with 2017 and 2020 National
 12 Electrical Code (“NEC”) requirements, specifically NEC “rapid shutdown requirements.”
 13 (PWRcell Brochure at p. 9.) It also represents that “SnapRS and PV Link Optimizers are listed to
 14 UL 1741.” UL 1741 is the Underwriters Laboratories Inc. Standard for Inverters, Converters,
 15 Controllers and Interconnection System Equipment for Use With Distributed Energy Resources,
 16 setting forth performance and safety requirements for such devices.

17 29. SnapRS units are installed between each solar panel to allow for rapid shutdown and
 18 protect against lightning strikes and other electrical surges, including when roof access is necessary
 19 or where electric shock or electrocution could result in serious injury, death and/or property
 20 damage.

21 30. Generac certifies and provides specific trainings, resources, and support to PWRcell
 22 sellers and installers, and has a distinct “Contractor Acquisition Team” to “onboard” its sellers and
 23 installers. (Generac.com, *Homeowners, Clean Energy, Become an Installer, available at*
 24 <https://www.generac.com/resources-and-tools/ce-installer-resources/become-an-installer> (last
 25 visited on Dec. 27, 2022.)

26 ///

27 ///

28 ///

Generac's PWRcell Limited Warranty

31. Generac's written warranty for its SnapRS units is for 25 years and other System components are covered for 10 years. Generac further warrants that its PWRcell products will be free from defects and that it will cover parts, labor, and travel for its defective equipment:

Generac Power Systems Limited Warranty for Generac PWRcell®

For the period of warranty noted below and beginning upon the successful registration of the unit, Generac Power Systems, Inc. (Generac) warrants that its Generac PWRcell® products will be free from defects in material and workmanship for the items and period set forth below. Any equipment that the purchaser/owner claims to be defective should be reported to Generac customer service for evaluation and resolution. Generac will, at its discretion, repair or replace any part(s) which, upon evaluation, inspection, and testing by Generac, an Independent Authorized Service Dealer or certified installer, is found to be defective.

Product	Model Number	Warranty Period	Coverage
Generac PWRcell Battery Cabinet	APKE00007 APKE00028	10 years	
Generac PWRcell Battery Modules	A0000391219 G0080040 G0080001 G0080003 G0080005	10 years or 7.56MWh of energy throughput per module, whichever comes first (i.e. a six module system carries a war- ranty of 10 years or 45.36 MWh of total energy throughput). Capacity retention guarantee at the end of the warranty period: At least 70% of nameplate rating.	
Generac PWRcell Inverter	APKE00014 APKE00013 XVT076A03 XVT114G03	10 years	Parts, Labor, and Limited Travel
PWRmanager™	G0080090	10 years	
PV Link™	APKE00010	25 years	
SnapRS™	APKE00011 RS801a RS802	25 years	

32. As alleged herein, Generac's Solar Products, including its SnapRS units, are not free from defects, including in the form of a defect where the SnapRS devices become overactive, overheats, bubbles, burns, separates, melts, chars, combusts, and/or explodes. Despite this, Plaintiff and Class Members were denied coverage for repairs. Rather, Generac takes the position that costs for repairs should be borne entirely by its customers or installers.

Generac's SnapRS Devices Are Defective and Unsafe

33. Generac's SnapRS devices link each solar panel within a solar panel array (usually consisting of approximately eight panels). Each array is connected to a PV Link optimizer, which connects and optimizes performance and energy output for the panels to help overcome, for example, site shading and roof line interference that can inhibit power production. Electricity is routed through the SnapRS units to the PV Link and into the Generac home battery storage system.

1 Each PV Link and solar panel array connected by SnapRS units are referred to as a “power zone.”

2 34. Generac’s SnapRS devices are supposed to remain in either an “on” or “off” state
3 for purposes of quickly reducing solar panel voltage.

4 35. Rather than remaining in an “on” or “off” condition, Generac’s SnapRS units are
5 defective in that they become overactive and turn on and off repeatedly. The overactivity in the
6 SnapRS unit causes them to overheat, bubble, burn, separate, melt, char, combust, and/or explode.
7 These thermal events can lead to fire and, upon information and belief, has caused fires and other
8 potential hazards to Generac consumers’ homes.

9 36. In addition, SnapRS failures can cause the System to experience a “PVRSS
10 Lockout” error. A PVRSS Lockout occurs when the inverter detects a malfunctioning or
11 overheating SnapRS between the solar panels. This can result in the System going into “lock out”
12 mode, shutting down the solar power energy System or otherwise reducing its power generation.

13 37. Upon information and belief, and after Generac had received significant numbers of
14 complaints from customers and installers about its System, Generac advised in or around August
15 2021 that it had a “fix” for the SnapRS overheating malfunction. It planned to release a firmware
16 update and had the ability to remotely identify defective SnapRS units that were in danger of
17 overheating and presented fire hazards to consumers. The firmware was intended to keep the
18 SnapRS signal constant rather than turn on and off repeatedly.

19 38. Generac instituted the firmware updates in August 2021. However, the SnapRS
20 overheating malfunction persisted. In addition, upon information and belief, Generac was aware
21 that a significant number of customers had not even received the firmware update because their
22 solar energy systems were not connected to the internet.

23 39. Furthermore, Generac’s firmware update adversely impacted customer solar power
24 energy Systems and energy production by triggering PVRSS Lockout system errors, shutting down
25 the System or entire arrays of panels for prolonged periods of time.

26 40. Generac never disclosed to its customers that SnapRS malfunctions persisted despite
27 its firmware update or that the firmware update could result in shutdowns or reduced power output
28 for its customers’ Systems.

1 41. In or around late 2021, Generac released a next generation SnapRS, called the
2 SnapRS 801A, which was supposed to fix the overheating malfunction in its prior SnapRS 801,
3 model. It did not. Generac's SnapRS 801A had the same or similar defects as its SnapRS 801,
4 including overheating and resulting in PVRSS Lockouts.

5 42. Upon information and belief, Generac acknowledged in or around May 2022 that it
6 experienced issues with its SnapRS 801 and 801A units and advised that it had developed and began
7 supplying a new unit, the SnapRS 802.

8 43. However, upon information and belief, Generac did not make enough SnapRS 802
9 units available to replace existing 801 and 801A units and to date has not replaced all of the existing
10 prior SnapRS models still installed on consumers' homes.

11 44. Upon information and belief, by spring of 2022, Generac represented that it had
12 submitted a report to the Consumer Product Safety Commission (“CPSC”) regarding its SnapRS
13 devices but refused to issue a product recall.

14 45. Upon information and belief, Generac has also acknowledged an estimated 50%
15 failure rate in its SnapRS devices.

16 46. As a result of the Defect, Generac's Solar Products pose an unreasonable safety risk
17 to consumers and their property. Instead of providing a reliable source of electricity in the event
18 of a power outage or natural disaster, they are subject to premature failure and are inherently
19 unreliable. Additionally, the Defect results in fire damage, power surges, loss of electricity, and
20 loss of monetary energy savings reasonably expected by consumers when purchasing their Generac
21 Solar Products.

22 47. Had Plaintiff and putative Class Members known that the Solar Products were
23 unreliable, defective, and unsafe, they would not have purchased Products or would have paid less
24 for them.

Generac Had Actual and/or Constructive Notice of the Defect

26 48. Generac knew or should have known that reasonable consumers and their agents
27 would be unaware of the true defective nature of the Solar Products, and that consumers reasonably
28 expected that the Solar Products they ordered and installed would function properly and not expose

1 their homes and occupants to serious risk of harm.

2 49. Similarly, Generac knew or should have known that solar power System installers
 3 would be unaware of the true defective nature of Generac's Solar Products.

4 50. Instead of disclosing the material safety defects, Generac failed to disclose and did
 5 not warn consumers that its Solar Products were defective and unsafe.

6 51. Generac had superior and exclusive knowledge of the Defect and the Defect is not
 7 reasonably discoverable by consumers until they experience a SnapRS thermal event or System
 8 disruption. As a result of Generac's inaction and silence, consumers are unaware that they have
 9 purchased, installed, and continue to have unsafe Solar Products installed on their homes, while
 10 Generac continues to profit from the sale of its Solar Products to consumers. Plaintiff and similarly
 11 situated consumers would not have purchased and installed Generac Solar Products had they known
 12 they were defective and unsafe.

13 52. Plaintiff is informed and believes and based thereon alleges that Generac acquired
 14 its knowledge of the material Defect prior to the time Plaintiff and Class Members purchased or
 15 leased the Solar Products, including through numerous consumer complaints, warranty
 16 submissions, information acquired through its PWRview information and other PWRcell
 17 monitoring systems that allow it to monitor System performance, and complaints from authorized
 18 sellers and installers such as Power Home Solar, LLC d/b/a Pink Energy. To be sure, Pink Energy
 19 filed a complaint against Generac detailing consumer and installer complaints to Generac based on
 20 Generac's defective SnapRS devices. *See Power Home Solar, LLC d/b/a Pink Energy v. Generac*
 21 *Power Systems*, Case No. 6:22-cv-000430NKM (W.D. Va.).

22 53. Generac's knowledge of the Defect is also based on its: research, development,
 23 testing, inspections; research, design, testing, development, and release of its firmware update prior
 24 to August 2021; research, design, testing, development and release of its replacement SnapRS 801A
 25 model; and research, design, testing, development and release of its SnapRS 802 model. Despite
 26 these updates and model replacements, Generac consistently failed to disclose and actively
 27 concealed the Defect from Plaintiff and putative Class Members.

28 54. Generac had notice of the Defect through consumer complaints and concerns

1 submitted directly to Generac as well as from the multitude of complaints or concerns posted online,
 2 including to the Better Business Bureau (“BBB”), on Reddit, and Facebook.

3 55. For example:

4  **Initial Complaint** **Complaint Type:** Problems with Product/Service
 5 **Status:** Resolved 
 6 11/25/2022
 7
 8 In late 2020 we had a solar system installed by Powerhome
 9 ***** ***** Since the time of installation we've had
 10 constant issues with the system going down (mainly due to the
 11 SnapRS from Generac). The snaps have been replaced multiple
 12 times. In August of 2022, we received a letter from *****
 13 saying that any issues with PVRSS lockout had to go through
 14 Generac. Shortly after that ***** filed for bankruptcy. Since
 15 September 5 of 2022 we've had 2 PV links that have a total of
 16 13 panels in PVRSS lockout. I've called Generac numerous times
 17 and the only information I've been given is you are on the list
 18 and someone will contact you about setting up an appointment
 19 to come out and service your system-they have no idea when
 20 that will be. In the meantime we are paying the full loan amount
 21 and are paying higher than normal electric bills which is fast
 22 becoming a financial issue. Generac says they will not in any
 23 way reimburse customers for systems being down. I would like
 24 to have a definite time when someone will be out to repair the
 25 system.

26
 27  **Business response**
 28 12/05/2022
 29
 30 *Hello*
 31 *Generac is in receipt of this complaint and have*
 32 *escalated this matter to our resolution team for*
 33 *further assistance.*
 34 *Generac*

35
 36 (Better Business Bureau, www.bbb.org., Complaints – Generac Power Systems, Inc., last visited
 37 on Dec. 27, 2022.)

38  **TroyMcLure963** · 2 mo. ago
 39
 40 Had all my snapRS replaced with the new version after my array was down for 3
 41 months with faulty first gen ones. But now have another issue and they are
 42 coming back out again soon. We will see if it's another snapRS.

43
 44  1      

1 (Reddit.com, *PwrCellOwners*, last visited on Dec. 27, 2022.)

2 Posted by u/petersinct 4 months ago



3 Looking at Generac solar system

4 Hi all,

5 I am considering a Generac solar /battery system with backup generator. In my
6 research, I came across the SnapRS issue. Apparently, earlier this year Generac released
7 a new version of the SnapRS - the SnapRS 802, which is supposed to solve the issue. I
8 am trying to find how those are faring from someone who either has a new Generac
9 system that came with those SnapRS 802's installed, or from someone with an existing
10 system who has had Generac replace their existing 801's with 802's.

11 Another thing - when the Generac technician came out to the house earlier this week to
12 do some measurements and roof assessment, I asked him about the SnapRS failures.
13 He acknowledged that they have had to replace quite a few of them, but didn't seem to
14 know anything about the new 802 version. He told me that they actually recommend to
15 customers to have their SnapRS REMOVED if it fails, since apparently the electrical code
16 in our state (connecticut) does not require them. I'm not an electrician, but if I
17 understand correctly those SnapRS modules are intended to function as a safety device
18 and it would make me a little nervous to not have them.

19 Any thoughts?

20 (Reddit.com, *PwrCellOwners*, last visited on Dec. 27, 2022.) The reddit *PwrCellOwners*
21 community was founded as early as 2020.



22 Gary of Corbett, OR ✓ Verified Reviewer

23 Original review: Nov. 13, 2022

24 As I write this review, all the PV panels on my roof are off-line. Why, because of
25 PVRSS lock-out errors: aka, the SNAP problem. Since, March of 2022, the
26 system has been off-line more often than not. Generac keeps resetting the
27 system remotely, and promising a real fix. First, they blamed faulty installation,
28 then finally admitted the RS801 SNAP units were defective. After, my system was
upgraded with the "new and improved" RS802 SNAP units, then they blamed
faulty software. So far, nothing they have done has fixed my system.

29 Generac's custom service has been a major disappointment. They alternate
30 between blaming anyone and everyone else, or acknowledging there "might" a
31 defect in the system with a "possible" fix in the development. On any given day,
32 the answer you get depends on who answers call or email. They still have not
33 issued any kind of formal statement. Bottom line, we have a >\$35K solar system
34 with battery back-up, that cannot reliably produce electrical power or perform its
35 primary mission of providing emergency back-up power - without the PV panels
36 on-line, it can't even attempt to keep the batteries charged after the lost of utility
37 power.

(Consumeraffairs.com/homeowners/generac-power-systems.html, last visited on Dec. 27, 2022.)

Brian Thomas
September 30 ·

Like many others our Generac PWRcell install started having SnapRS issues and PV Lockout errors. It started with 1 link of 5 panels. Finally after 2 weeks of unanswered phone calls and emails I went to the local solar installers office in person.. Very nicely explained my issue along a few other things I'd like to discuss including adding a ATS for a portable generator.

Later today I got a call back and they are scheduling a team to come out and remove all of the SnapRS as they claim Generac has given permission to operate our systems without them until they can develop a permanent solution. Any others heard about this method?

edit: local installer is Con Edison of NY/CT

(Facebook.com, Generac PWRcell Systems, Battery Storage, Home Energy, Energy Storage Group, last visited on Dec. 27, 2022.)

Jim Humphrey
April 26 · 3

April 26 ·

Known snap rs part defect is my cause of 2 mos and now a 3 mos loss of 25-30% of my solar capacity. Generac defective part should have a reimbursement process for lost power as they also have connectivity to error msgs. Loss of \$'s can be quantified in my opinion. I was told new part would be available end of April, 2022. No word yet.



(Facebook.com, Generac PWRcell Systems, Battery Storage, Home Energy, Energy Storage Group, last visited on Dec. 27, 2022.)

1 56. Despite Generac's notice of the Defect, it refused to adequately address or remedy
2 the Defect or remove its defective Solar Products from the market. It also improperly denied
3 warranty claims or replaced its defective Solar Products with Solar Products that were still
4 defective, inadequate, and failed to work properly.

5 57. Generac continues to refuse to appropriately address the Defect. It continues to sell
6 its defective Solar Products, actively conceals the Defect, fails to notify its customers of the Defect,
7 and refuses to recall the Systems.

Plaintiff's Individual Facts

9 58. In or around July 31, 2020, Plaintiff purchased a Generac PWRcell system in
10 Soquel, California for residential use. The PWRcell system and solar panels were installed by
11 Infinium Solar, Inc. (“Infinium”). The cost of the solar energy system was \$86,042 and after
12 finance charges will cost roughly \$100,000.

13 59. Prior to purchase, Plaintiff received materials about Generac's PWRcell system
14 from Infinium and he conducted separate online research about Generac's PWRcell system,
15 including on Generac's website. Plaintiff reasonably relied on representations contained in
16 Generac's materials. Plaintiff at all times reasonably believed that he was purchasing a Generac
17 System that would operate as intended for purposes of safely delivering dependable solar energy
18 and lowering his energy costs.

19 60. In addition, Plaintiff at all times used the Generac System as intended for normal,
20 residential energy production and savings.

21 61. In or around March 2022, SnapRS 801 components for Plaintiff's PWRcell system
22 failed. He received a PWRcell system error alert and the Infinium repair person who inspected the
23 problem found that SnapRS units for the System had bubbled and melted. Plaintiff's Generac
24 System was down for roughly three-and-a-half months after the SnapRS devices failed.

25 62. Plaintiff believes the SnapRS 801 components were replaced with SnapRS 802s in
26 or around June 2022. However, he continued to experience System power failures for several
27 months even after SnapRS 802 devices were installed.

28 63. Plaintiff has suffered a loss of energy production and monetary harm as a result of

1 the defective Generac System. Also, instead of owning a reliable alternative electrical source that
 2 could provide energy in the event of a power outage or natural disaster, Plaintiff now has an
 3 unreliable System that is subject to frequent outages and malfunctions.

4 64. Plaintiff was unaware of Generac's defective System, including the SnapRS Defect,
 5 prior to purchasing the System. Had he known of the Defect, he would not have purchased the
 6 System or would have paid less for it than he did.

7 **TOLLING AND ESTOPPEL OF STATUTES OF LIMITATIONS**

8 65. The claims alleged herein accrued upon discovery of the defective nature of the
 9 Solar Products. Because the Defect alleged herein is hidden and Generac took steps to either
 10 conceal or failed to disclose the true, character, nature and quality of the Solar Products, Plaintiff
 11 and Class Members did not discover and could not have discovered it through reasonable and
 12 diligent investigation.

13 66. Any applicable statutes of limitations have been tolled by Generac's knowledge
 14 and actual misrepresentations and/or concealment and denial of the facts as alleged herein, which
 15 concealment is ongoing. Plaintiff and Class Members could not have reasonably discovered the
 16 true defective nature of their Solar Products until they malfunctioned. As a result of Generac's
 17 active concealment of the Defect and/or failure to inform Plaintiff and Class Members of the Defect,
 18 any and all statutes of limitations otherwise applicable to the allegations herein have been tolled.

19 67. Alternatively, the facts alleged above give rise to estoppel. Generac has actively
 20 concealed the defective nature of the Solar Products. Generac was and is under a continuous duty
 21 to disclose to Plaintiff and Class Members the true character, quality, and nature of the Solar
 22 Products, particularly that they posed a serious risk to life and property. At all relevant times, and
 23 continuing to this day, Generac knowingly, affirmatively, and actively misrepresented and
 24 concealed the true character, quality, and nature of the Solar Products. Given Generac's failure to
 25 disclose this non-public information about the defective nature of the Solar Products—information
 26 over which it had exclusive control—and because Plaintiff and Class Members could not
 27 reasonably have known that the Solar Products were thereby defective, Plaintiff and Class Members
 28 reasonably relied on Generac's affirmative and/or ongoing concealment or nondisclosure. Based

1 on the foregoing, Generac is estopped from prevailing on any statute of limitations defense in this
 2 action.

3 68. Additionally, Generac is estopped from raising any defense of laches due to its own
 4 Unclean hands as alleged herein.

5 **CLASS ACTION ALLEGATIONS**

6 69. Plaintiff brings this action both individually and as a class action pursuant to Fed.
 7 R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) against Generac on his own behalf and on behalf of a
 8 Nationwide Class and California subclass (collectively the “Class”) as defined below. At the class
 9 certification stage, in response to discovery and pursuant to any instruction by the Court, the
 10 Plaintiff may modify the class definition in the future.

11 **Nationwide class:**

12 During the fullest period allowed by law, all persons in the United States who
 13 purchased, leased, or otherwise acquired a defective Generac PWRcell System.

14 **California subclass:**

15 During the fullest period allowed by law, all persons in the State of California who
 16 purchased or leased in the State of California a defective Generac PWRcell System.

17 70. Excluded from the Class are (a) any Judge or Magistrate presiding over this action
 18 and members of their families; (b) Generac and any entity in which Generac has a controlling
 19 interest or which has a controlling interest in Generac; (c) the officers and directors of Generac; (d)
 20 Generac’s legal representatives, assignees and successors; and (e) all persons who properly execute
 and timely request for exclusion from the Class.

21 71. Plaintiff meets the prerequisites of Rule 23(a) to bring this action on behalf of the
 22 Class.

23 72. **Numerosity:** While the exact number of members cannot be determined yet, the
 24 Class consists of, at a minimum, thousands of people dispersed throughout the United States and
 25 California, such that joinder of all members is impracticable. The exact number of Class Members
 26 can readily be determined by review of information maintained by Generac.

27 73. **Commonality:** Common questions of law and fact exist as to all members of the
 28 Class. Among the questions of law and fact common to the Class are:

- 1 a. Whether the Solar Products designed, manufactured and sold by Generac pose a
- 2 safety risk to consumers;
- 3 b. Whether Generac knew, or should have known, that the Solar Products it sold
- 4 posed an unreasonable safety risk to consumers;
- 5 c. Whether Generac concealed the Defect from consumers;
- 6 d. Whether the Solar Products contain a defect that presents an unreasonable risk
- 7 of overheating, burning, bubbling, separating, melting, charring, combusting,
- 8 and/or exploding;
- 9 e. Whether Generac concealed the safety risk its Solar Products posed to
- 10 consumers;
- 11 f. Whether the safety risk the Solar Products pose to consumers is a material fact
- 12 reasonable purchasers would have considered in deciding whether to purchase
- 13 them;
- 14 g. Whether the Solar Products designed and manufactured by Generac possess any
- 15 material defect;
- 16 h. Whether the Solar Products designed and manufactured by Generac are of
- 17 merchantable quality;
- 18 i. Whether the Solar Products designed and manufactured by Generac are likely to
- 19 pose a serious safety risk to consumers before the end of their reasonable
- 20 expected lives;
- 21 j. Whether Generac breached express warranties relating to the Solar Products by
- 22 failing to recall, replace, repair and/or correct the defect in the Solar Products;
- 23 k. Whether Generac breached implied warranties of merchantability relating to the
- 24 Solar Products;
- 25 l. Whether Generac misrepresented the characteristics, qualities and capabilities
- 26 of the Solar Products;
- 27 m. Whether Generac knew, or in the exercise of reasonable care, should have
- 28 known of the Defect prior to distributing the Solar Products to Plaintiff and Class

1 Members;

2 n. Whether Generac omitted, concealed from and/or failed to disclose in its
3 communications and disclosures to Plaintiff and Class Members material
4 information regarding the Defect;

5 o. Whether Generac failed to warn consumers regarding the defective Solar
6 Products;

7 p. Whether Generac made fraudulent, false, deceptive, misleading and/or
8 otherwise unfair and deceptive statements in connection with the sale of the
9 Solar Products in its Solar Product literature and on its website, including those
10 relating to standards, use and reliability;

11 q. Whether Generac was unjustly enriched as a result of selling the defective Solar
12 Products;

13 r. Whether Generac should be ordered to disgorge all or part of the profits it
14 received from the sale of the defective Solar Products;

15 s. Whether Plaintiff and Class Members are entitled to damages, including
16 compensatory, exemplary, and statutory damages, and the amount of such
17 damages;

18 t. Whether Plaintiff and Class Members are entitled to replacement of their
19 defective Solar Products;

20 u. Whether Plaintiff and Class Members are entitled to equitable relief, including
21 an injunction and requiring that Generac engage in a corrective notice campaign
22 and/or a recall of the defective Solar Products; and

23 v. Whether Plaintiff and Class Members are entitled to an award of reasonable
24 attorneys' fees, pre-judgment interest, post-judgment interest, and costs.

25 74. **Typicality:** Plaintiff has substantially the same interest in this matter as all other
26 Class Members, and Plaintiff's claims arise out of the same set of facts and conduct as all other
27 Class Members. Plaintiff and all Class Members purchased or leased Solar Products which were
28 manufactured by Generac with the Defect. All of the claims of Plaintiff and Class Members arise

1 out of Generac's placement into the marketplace of a Solar Product it knew was defective and
 2 caused a safety risk to consumers and from Generac's failure to disclose those known safety risks
 3 and the Defect. Also common to Plaintiff's and Class Members' claims is Generac's conduct in
 4 designing, manufacturing, marketing, advertising, warranting and/or selling the defective Solar
 5 Products, Generac's conduct in concealing the Defect in the Solar Products, and Plaintiff's and
 6 Class Members' purchase or leasing of the Solar Products.

7 **75. Adequacy of Representation:** Plaintiff is committed to pursuing this action and
 8 has retained competent counsel experienced in complex class action litigation and products
 9 liability. Accordingly, Plaintiff and his counsel will fairly and adequately protect the interests of
 10 Class Members. Plaintiff's claims are coincident with, and not antagonistic to, those of the other
 11 Class Members they seek to represent. Plaintiff has no disabling conflicts with Class Members and
 12 will fairly and adequately represent the interests of Class Members.

13 76. The elements of Rule 23(b)(2) are met. Generac will continue to commit the
 14 violations alleged, and the members of the Class and the general public will continue to remain at
 15 an unreasonable and serious safety risk as a result of the Defect. Generac has acted and refused to
 16 act on grounds that apply generally to Class Members so that final injunctive relief and
 17 corresponding declaratory relief is appropriate respecting the Class as a whole.

18 77. The elements of Rule 23(b)(3) are met. Here, the common questions of law and fact
 19 enumerated above predominate over the questions affecting only individual Class Members, and a
 20 class action is the superior method for fair and efficient adjudication of the controversy. Although
 21 many other Class Members may have claims against Generac, the likelihood that individual Class
 22 Members will prosecute separate actions is remote due to the time and expense necessary to conduct
 23 such litigation. Serial adjudication in numerous venues is furthermore not efficient, timely, or
 24 proper. Judicial resources will be unnecessarily depleted by resolution of individual claims.
 25 Joinder on an individual basis of thousands of claimants in one suit would be impractical or
 26 impossible. Individualized rulings and judgments could result in inconsistent relief for similarly
 27 situated Plaintiff. Plaintiff's counsel, highly experienced in class action litigation, foresee little
 28 difficulty in the management of this case as a class action.

FIRST CAUSE OF ACTION
Breach of Express Warranty
**(Individually and on Behalf of the Nationwide Class and, in the Alternative,
the California Class)**

78. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

79. As set forth above, Generac's written warranty to Plaintiff and the Class specifically provides for SnapRS coverage for 25 years and 10 years of coverage for other PWRcell components, warrants that its PWRcell products are defect free, and that it will cover parts, labor, and travel for its defective equipment.

80. Generac breached its express warranty by selling Solar Products that were defective and not safe or reliable for providing residential solar electricity.

81. Generac's warranty was uniform or substantially uniform as to product representations among the Solar Products sold.

82. Plaintiff and Class Members have privity of contract with Generac through their purchase of Solar Products through Generac agents (e.g., its installer/seller network), and through express written warranties that Generac issued to its customers. Generac's warranties accompanied the Solar Products and were intended to benefit the ultimate consumers of the Solar Products.

83. The express written warranties covering the Solar Products were material and part of the bargain with Generac, on the one hand, and Plaintiff and Class Members, on the other hand. At the time it made these express warranties, Generac knew of the intended purpose of the Solar Products.

84. Generac breached its express warranties when it failed to sell Solar Products that were free of defects and which could be used for their ordinary purpose. Generac breached its express written warranties to Plaintiff and Class Members in that the Solar Products contain a defect upon the very first day of purchase, including in the form of SnapRS units that overheat, bubble, burn, separate, melt, char, combust, and/or explode when they become overactive. Generac's Solar Products create a serious risk to Plaintiff and Class Members, do not provide consistent or reliable residential solar energy, and fail to perform as represented by Generac.

1 85. Plaintiff and Class Members submitted Generac Solar Products for repair, refunds,
 2 and/or replacement to Generac and/or its agents and Generac failed to comply with the terms of the
 3 express warranty provided to Plaintiff and Class members, by failing and/or refusing to repair or
 4 replace the subject defective Solar Products under the warranty as described herein.

5 86. Generac's acts in failing and/or refusing to repair or replace the defective Solar
 6 Products during the warranty period so as to bring the Solar Products into conformity with the
 7 express warranties, deprived Plaintiff and Class Members of their rights guaranteed under the
 8 express warranties offered by Generac.

9 87. The warranty also fails in its essential purpose because it is insufficient to make
 10 Plaintiff and Class Members whole, and/or because Generac has failed to provide the promised
 11 remedy within a reasonable time.

12 88. As a direct and proximate result of the willful failure of Generac to comply with its
 13 obligations under the express warranties, Plaintiff and Class Members have suffered actual and
 14 consequential damages. Such damages include, but are not limited to, the cost of repairing the
 15 Solar Products, loss of the use and enjoyment of the Solar Products, and diminution in the value of
 16 the Solar Products identified herein.

17 89. In addition, many of the damages resulting from the defective Solar Products cannot
 18 be resolved through the limited remedy of repair or replacement, as those incidental and
 19 consequential damages have already been suffered due to Generac's conduct as alleged herein.

20 90. Generac received notice and has been on notice of the defect and of its breaches of
 21 express warranties through customer complaints.

22 91. Despite such notice and its knowledge of the defect, Generac failed to provide efect-
 23 free Solar Products to Plaintiff and Class Members, failed to properly or adequately repair and/or
 24 replace the defective Solar Products, and failed to provide any form of compensation for the
 25 damages resulting from the Defect.

26 92. As a result of Generac's breach of its express written warranties, Plaintiff and Class
 27 Members have suffered damages in an amount to be determined at trial. Plaintiff and Class
 28 Members seek all remedies allowed by law.

SECOND CAUSE OF ACTION

Breach of Implied Warranty

**(Individually and on Behalf of the Nationwide Class and, in the Alternative,
the California Class)**

93. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

94. Generac extended an implied warranty to Plaintiff and Class Members that the subject Solar Products were merchantable and fit for the ordinary purpose for which such goods were sold.

95. Persons who purchased Generac Solar Products are entitled to the benefit of their bargain: a residential solar energy system that is safe, dependable, and non-defective.

96. Generac's defective Solar Products place Plaintiff, Class Members, and members of the public at a risk for injury upon using the Solar Products in a reasonably foreseeable manner.

97. At the time of delivery, Generac breached the implied warranty in they are not fit for ordinary use and not of a merchantable quality in that the Solar Products were defective and posed a risk of injury to the public at the time of sale, would not pass without objection, and failed to conform to the standard performance of like products used in the trade.

98. Generac knew or should have known that the Solar Products were defective, posed a risk to injury to the public, and knew or should have known of these breaches of implied warranties at the time of its sale of the Solar Products to Plaintiff and Class Members.

99. Plaintiff and Class Members have privity of contract with Generac through their purchase of the Solar Products through Generac agents (e.g., its installer/seller network) and through the express written and implied warranties that Generac issued to its customers. Generac's warranties accompanied its Solar Products and were intended to benefit the ultimate consumers of the Solar Products.

100. As a direct and proximate result of Generac's breaches of its implied warranties, Plaintiff and Class Members bought the Solar Products without knowledge of the Defect, their serious risk of injury, and that the Solar Products failed to produce consistent and dependable residential solar energy.

101. As a direct and proximate result of Generac's breach of its implied warranties, Plaintiff and Class Members purchased defective Solar Products, which could not be used for their intended use.

102. Generac received notice and has been on notice of the Defect and of its breaches of warranties, including through: customer inquiries, complaints, and concerns; warranty submissions; its own research, inspection, and testing; inquiries, complaints and concerns from its installer and seller network; lawsuits; media coverage and inquiries; and communications with governmental entities, including the CPSC.

103. Despite such notice and its knowledge of the Defect, Generac failed to provide defect-free Solar Products to Plaintiff and Class Members, failed to replace the defective Solar Products, and failed to provide any form of compensation for damages resulting from the Defect.

104. Had the fact of the Defect been disclosed at the time of sale, Generac's Solar Products could not have been sold, or could not have been sold at the same price.

105. As a direct and proximate result of Generac's breach of its implied warranties, Plaintiff and Class Members have suffered damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION

Breach of Express Warranties Under the Song-Beverly Consumer Warranty Act (Individually and on Behalf of the California Sub-Class)

106. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

107. The Solar Products are “consumer goods” under California Civil Code section 1791(a).

108. Generac is and was at all relevant times a “manufacturer” of the Solar Products under California Civil Code section 1791(j); and, with respect to leases, is and was at all relevant times a “lessor” of Solar Products under California Civil Code section 1791(j).

109. Plaintiff and Class Members bought and leased Solar Products designed, manufactured, warranted, marketed to them, and intended to be purchased or leased by consumers such as them, by Generac.

1 110. Generac expressly warranted the Solar Products against defects within the meaning
2 of California Civil Code sections 1791.2 and 1793.2.

3 111. As described above, the Solar Products are defective. The Defect impairs the use,
4 value, and safety of the Systems to reasonable consumers, Plaintiff and Class Members.

5 112. Generac knew of the Defect when it expressly warranted the Solar Products,
6 wrongfully and fraudulently concealed material facts regarding the Defect, failed to inform Plaintiff
7 and Class Members that the Solar Products were defective, and induced Plaintiff and Class
8 Members to purchase or lease the Solar Products under false and/or fraudulent pretenses.

9 113. Generac is obligated, under the terms of its express warranties and pursuant to
10 California Civil Code sections 1793.2 and 1795.4 to repair and/or replace the defective Solar
11 Products at no cost to Plaintiff and Class Members.

12 114. Generac breached its express warranties by supplying defective Solar Products to
13 Plaintiff and Class Members.

14 115. Generac breached its express warranties by failing to repair the Solar Products under
15 warranty and failing to provide to Plaintiff or Class Members, as a warranty replacement, a product
16 that conforms to the qualities and characteristics that it promised when it sold the Solar Products to
17 Plaintiff and Class Members.

18 116. As detailed above, Generac was provided with appropriate notice and has been on
19 notice of the Defect and of its breach of its express written warranties from various sources,
20 including Plaintiff.

21 117. Plaintiff has given Generac a reasonable opportunity to cure its failures with respect
22 to its warranties, and Generac has failed to do so.

23 118. Affording Generac any further opportunity to cure their breach of written warranties
24 is unnecessary and futile here.

25 119. Any express warranties promising to repair and/or correct any defects fail in their
26 essential purpose because the contractual remedy is insufficient to make Plaintiff and Class
27 members whole and because Generac has failed and/or has refused to adequately provide the
28 promised remedies within a reasonable time.

1 120. Accordingly, recovery by Plaintiff and Class Members is not restricted to any
 2 written warranties promising to repair and/or correct defects, and they seek all remedies as allowed
 3 by law.

4 121. Any attempt by Generac to limit or disclaim the express warranties in a manner that
 5 would exclude coverage of the Defect is unenforceable and void pursuant to California Civil Code
 6 section 1790.1.

7 122. As a direct and proximate result of Generac's breach of its express warranties,
 8 Plaintiff and Class Members received goods that have substantially impaired value and have
 9 suffered damages in an amount to be determined at trial.

10 123. Pursuant to California Civil Code sections 1794 and 1795.4, Plaintiff and Class
 11 Members are entitled to incidental, consequential, and other damages and other legal and equitable
 12 relief, as well as costs and attorneys' fees.

13 **FOURTH CAUSE OF ACTION**

14 **Breach of Implied Warranties Under the Song Beverly Consumer Warranty Act**
(Individually and on Behalf of the California Sub-Class)

15 124. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth
 herein.

16 125. Generac Solar Products are "consumer goods" and Plaintiff and Class Members are
 17 "buyers" within the meaning of California Civil Code section 1791. Generac is also a
 18 "manufacturer" and "lessor" under California Civil Code section 1791.

19 126. Every sale or lease of consumer goods is accompanied by a manufacturer's implied
 20 warranty that the goods are merchantable within the meaning of California Civil Code section
 21 1791.1(a).

22 127. Generac impliedly warranted to Plaintiff and Class Members that its Solar Products
 23 were "merchantable" within the meaning of California Civil Code sections 1791 and 1792.

24 128. The implied warranty of merchantability included with each sale or lease of a
 25 Generac Solar Product means that Generac warranted that each item (a) would pass without
 26 objection in trade under the contract description; (b) was fit for the ordinary purposes for which the
 27 Solar Products would be used; and (c) conformed to Generac's promises or affirmations of fact.

129. This implied warranty included, *inter alia*, a warranty that the Solar Products manufactured, supplied, distributed, and/or sold by Generac were safe and reliable; and a warranty that the Solar Products would be fit for their intended use while the Solar Products were being used.

130. Contrary to the applicable implied warranties, the Solar Products at the time of sale or lease and thereafter were defective and not fit for their ordinary and intended purpose in that they pose a safety risk and do not produce consistent and dependable solar energy.

131. The Defect at the point of sale or lease exists without warning to Class Members.

132. Plaintiff and Class Members were intended third-party beneficiaries of the contracts for sale or lease of the Solar Products from Generac to its agents (e.g., installer/seller network) who ultimately sold the Solar Products to Plaintiff and Class Members. Generac, which manufactures and markets the Solar Products, knew that Plaintiff and Class Members were end-users of the Solar Products, and brought itself into privity with Plaintiff and Class Members who relied upon written representations made by Generac as alleged herein.

133. Generac's actions have deprived Plaintiff and Class Members of the benefit of their bargain and have caused the Solar Products to be worth less than what Plaintiff and Class Members paid.

134. Any attempt by Generac to limit or disclaim the implied warranties in a manner that would exclude coverage of the Defect is unenforceable and void pursuant to California Civil Code sections 1790.1, 1792.3, and 1793.

FIFTH CAUSE OF ACTION

**Unlawful, Unfair and Fraudulent Business Practices,
California Business and Professions Code § 17200, et seq.
(Individually and on Behalf of the California Sub-Class)**

135. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

136. Generac's practices as alleged in this complaint constitute unlawful, unfair, and fraudulent business practices under California's Unfair Competition Law, Bus. & Prof. Code §§ 17200, et seq. ("UCL").

1 137. Generac committed unlawful, fraudulent and/or unfair business practices in
 2 violation of the UCL because it, among other things: (a) knew or should have known that its Solar
 3 Products contained a dangerous Defect; (b) knew or should have known Plaintiff and Class
 4 Members could not learn or discover the Defect; (c) failed to disclose the Defect in the Solar
 5 Products; and (d) engaged and continues to engage in conduct that is immoral, unethical,
 6 oppressive, unscrupulous, or substantially injurious to Plaintiff and Class Members.

7 138. Among other things, Generac: (a) failed to disclose and/or concealed
 8 from Plaintiff and Class Members at the time of sale that its Solar Products contained a significant
 9 safety Defect as detailed herein; and (b) failed to repair, replace or recall the defective Solar
 10 Products. Because the Defect is not observable, reasonable Plaintiff and Class Members were
 11 deceived into purchasing Solar Products with the Defect.

12 139. Plaintiff and Class Members have suffered injury in fact as a result of Generac's
 13 unlawful, unfair, or fraudulent practices, in that, among other things: (a) they would not have
 14 purchased the Solar Products; (b) they have been deprived of making an informed decision about
 15 the Solar Products they purchased; and (c) they would not have endangered themselves or the
 16 occupants of their households with these dangerously defective Solar Products.

17 140. As an entity with exclusive knowledge regarding the Defect, Generac had a duty to
 18 disclose the Defect, particularly in light of the fact that the Defect poses risks of significant injury
 19 and economic losses to Plaintiff and the Class Members.

20 141. Plaintiff and the Class Members reasonably expected that Generac would disclose
 21 the existence of the Defect to consumers and the public, and reasonably expected that Generac
 22 would not sell or lease a product that was defective and prone to cause significant injury and/or that
 23 failed to provide consistent and dependable solar energy. This information is and was material to
 24 Plaintiff and Class Members.

25 142. Generac, at all times relevant, knew or should have known that Plaintiff and Class
 26 Members did not know of, or could not have reasonably discovered, the risks related to the Defect.

27 143. By concealing the existence of the Defect, Generac engaged in actionable,
 28 fraudulent conduct within the meaning of the UCL.

1 144. Had Plaintiff and Class Members known that the Solar Products were defective, they
 2 would not have purchased or leased them. In addition, Plaintiff and Class Members have lost the
 3 benefit of their bargain as the Solar Products they paid for are not worth the price paid due to their
 4 defective condition.

5 145. Generac's business acts and practices alleged herein are unfair within the meaning
 6 of the UCL. Specifically, by failing to disclose and actively concealing the existence of the Defect
 7 in the Solar Products, Generac has engaged in unfair conduct within the meaning of the UCL.

8 146. Generac's misconduct is unfair within the meaning of the UCL: it offends
 9 established policy and/or is immoral, unethical, unscrupulous, and substantially injurious to
 10 consumers; its utility, if any, is outweighed by the gravity of the consequences to Plaintiff and other
 11 Class Members; and it undermines or violates the stated policies underlying the California
 12 Consumers Legal Remedies Act, California Civil Code section 1750, et seq. ("CLRA"), which
 13 seeks to protect consumers against unfair and sharp business practices and promote a basic level of
 14 honesty and reliability in the marketplace, and thus provides a sufficient predicate for Plaintiff's
 15 claims for unfair business practices.

16 147. Generac committed unlawful acts and practices by, among other things, engaging in
 17 conduct, as alleged herein, the violates the CLRA and Song Beverly Consumer Warranties Act.

18 148. Plaintiff and the Class Members have suffered damages as a result of Generac's
 19 misconduct. Generac's unlawful, unfair, and fraudulent business acts and practices continue
 20 through the date of this filing.

21 149. The above-described unfair, unlawful and fraudulent business practices conducted
 22 by Generac present a threat and likelihood of harm and deception to members of the Class and the
 23 public in that Generac has systematically perpetrated and continues to perpetrate the unfair,
 24 unlawful and fraudulent conduct upon members of the public by engaging in the conduct described
 25 herein.

26 150. Under the UCL, Plaintiff and Class Members request that Generac be enjoined from
 27 engaging in business practices that constitute a violation of the UCL and other acts prohibited by
 28 law. Plaintiff and Class Members further request that this Court enter such orders or judgments as

1 may be necessary to restore to any person in interest any money which may have been acquired by
 2 means of such unfair practices, as provided for in California Business and Professions Code section
 3 17203 and for such other relief as set forth herein.

4 **SIXTH CAUSE OF ACTION**

5 **Violation of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750 et seq.
 (Individually and on Behalf of the California Sub-Class)**

6 151. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth
 7 herein.

8 152. Generac is a “person” within the meaning of California Civil Code sections 1761(c)
 9 and 1770 and has provided “goods” within the meaning of California Civil Code sections 1761(b)
 10 and 1770.

11 153. Plaintiff and members of the Class are “consumers” within the meaning of
 12 California Civil Code sections 1761(d) and 1770 and have engaged in a “transaction” within the
 13 meaning of California Civil Code sections 1761(e) and 1770.

14 154. Generac’s acts and practices, which were intended to result and which did result in
 15 the sale of Generac products to Plaintiff and Class Members, violate section 1770 of the Consumers
 16 Legal Remedies Act in that:

- 17 a. Generac represents that its Solar Products have characteristics, uses, or benefits
 18 which they do not have (Cal. Civ. Code § 1770(a)(5));
- 19 b. Generac represents that its Solar Products are of a particular standard, quality,
 20 or grade when they are not (Cal. Civ. Code § 1770(a)(7));
- 21 c. Generac advertises its goods with intent not to sell them as advertised (Cal. Civ.
 22 Code § 1770(a)(9)); and
- 23 d. Generac represents that its goods have been supplied in accordance with a
 24 previous representation when they have not (Cal. Civ. Code § 1770(a)(16)).

25 155. Generac knew, should have known, or was reckless in not knowing that its Solar
 26 Products were defective and did not have the qualities and characteristics it represented, warranted,
 27 and advertised them to have.

1 156. Generac engaged in these unfair and deceptive acts or practices with the intent that
2 they result, and which did result, in the sale of the of the subject Solar Products to Plaintiff and the
3 Class.

4 157. Generac's unfair and deceptive acts or practices occurred repeatedly in its course of
5 trade or business, were material, capable of deceiving a substantial portion of the purchasing public
6 and imposed a safety risk to Plaintiff and Class Members.

7 158. Generac was under a duty to Plaintiff and Class Members to disclose the deceptive
8 and defective nature of its Solar Products in part because: the Defect in the Solar Products presents
9 a serious safety hazard and the Solar Products failed to produce consistent and dependable solar
10 energy; Generac was in a superior position to know and had exclusive knowledge of the true
11 condition of its Solar Products; Plaintiff and Class Members could not reasonably have been
12 expected to learn or discover that the Solar Products were defective; Generac knew that Plaintiff
13 and Class Members could not reasonably have been expected to learn or discover the Defect in the
14 Solar Products.

15 159. As described above, in connection with the marketing and sale of its Solar Products
16 to Plaintiff and Class Members, Generac actively concealed and failed to disclose material
17 information despite having knowledge the Defect described herein before Plaintiff and Class
18 Members purchased the Solar Products.

19 160. The fact that consumers were entering into a sale or lease for Solar Products that
20 were unsafe and failed to operate properly is a material fact in that a reasonable person would have
21 considered that an important factor in deciding whether to complete the transaction for the subject
22 Solar Products. Plaintiff would not have purchased the subject Solar Products had he known of
23 that fact.

24 161. As a direct and proximate result of Generac's violations of law, Plaintiff and Class
25 Members suffered injury in fact and lost money or property.

26 162. Plaintiff seeks an order enjoining Generac from the unlawful practices described
27 above and an Order requiring Generac to notify the Class of its violations of the CLRA and the
28 remedy it will provide to them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. For compensatory damages in an amount to be determined at trial;
- B. For punitive damages in an amount to be determined at trial;
- C. For an award of reasonable attorneys' fees, costs and expenses;
- D. For interest as provided by law, including but not limited to pre-judgment and post-judgment interest as provided by rule or statute; and
- E. For such other and further relief, including equitable and injunctive relief, that the court deems just, equitable, and appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: December 30, 2022

KERSHAW TALLEY BARLOW, PC

By: /s/ William A. Kershaw

William A. Kershaw

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Attorneys for Plaintiff and

Attorneys for Plaintiff and the putative Class

DECLARATION OF WILLIAM A. KERSHAW
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)

I, William A. Kershaw, declare as follows:

1. I submit this declaration pursuant to section 1780(d) of the California Consumers Legal Remedies Act. I have personal knowledge of the matters set forth below and if called as a witness could and would be competent to testify thereto.

2. Defendants Generac Power Systems, Inc. and Generac Holdings, Inc. are Delaware corporations with their principal place of business in Wisconsin. Defendant was engaged in the business of sales, marketing, and distribution of its solar power energy systems and components in California, and throughout the United States of America.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on December 30, 2022 in Sacramento, California.

/s/ William A. Kershaw
WILLIAM A. KERSHAW